



Department of State **TELEGRAM**

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ACTION L-03

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TO SECSTATE WASHDC 1326

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E.O. 12065: NA
TAGS: ETRD, PGOV, EINV, JA
SUBJECT: FOREIGN MINISTRY INTEREST IN DISCRIMINATION
CASE, LISA M. AVIGLIANO, ET AL., AGAINST SUMITOMO SHOJI
AMERICA INC.

REF: STATE 227464

1. THE FOREIGN MINISTRY OFFICIALS WITH WHOM WE HAVE BEEN DISCUSSING THE AVIGLIANO CASE APPRECIATED THE INFORMATION PROVIDED IN THE REPTTEL. WE EXPLAINED TO THEM WHY WE BELIEVE A BROAD INTERPRETATION OF TREATIES OF FRIENDSHIP, COMMERCE AND NAVIGATION IS IN THE INTEREST OF BOTH THE UNITED STATES AND JAPAN, BUT THEY OFFERED NO COMMENT. THE FOREIGN MINISTRY'S INITIAL RESEARCH INDICATES THAT JAPANESE COURTS NEVER HAVE CONSTRUED THE FCN TREATY. THE MINISTRY APPARENTLY BASED ITS DECISION ON SUMITOMO SHOJI ON A 1975 IMMIGRATION CASE, WHICH NEVER WENT TO COURT, INVOLVING A U.S. CITIZEN, MELVIN CRONIN. CRONIN APPARENTLY APPLIED FOR A JAPANESE RESIDENCE VISA TO WORK FOR A U.S. SUBSIDIARY INCORPORATED IN JAPAN. THE IMMIGRATION AUTHORITIES REFUSED THE VISA BECAUSE THEY DID NOT RECOGNIZE THE SUBSIDIARY AS A U.S. COMPANY ENTITLED TO THE RIGHTS AND PRIVILEGES DEFINED IN THE FCN TREATY. AFTER SOME DISCUSSION BETWEEN U.S. AND JAPANESE OFFICIALS, THE JAPANESE IMMIGRATION AUTHORITIES FOUND A WAY TO GIVE
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CRONIN A VISA BUT THEY DID NOT CONCEDE THE PRINCIPLE.

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ACCORDING TO THE FOREIGN MINISTRY, THE DEPARTMENT'S OFFICE OF THE LEGAL ADVISOR IS AWARE OF THE CRONIN CASE.

2. WE HAVE OBTAINED FROM THE FOREIGN MINISTRY COPIES OF JAPAN'S COMMERCIAL TREATIES WITH CANADA, GERMANY (SIGNED IN 1927), THE UK AND THE PHILIPPINES. THE TREATY WITH CANADA IS RESTRICTED TO TRADE AND DOES NOT DISCUSS INVESTMENT OR THE RIGHTS OF COMPANIES. WE HAVE NOT EXAMINED THE TREATY WITH GERMANY CAREFULLY BECAUSE IT IS NOT IN ENGLISH. BOTH THE PHILIPPINE AND THE UK TREATIES WERE SIGNED AFTER THE TREATY WITH THE U.S. AND PROVIDE FOR MFN TREATMENT. THE UK TREATY PROVIDES:
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ARTICLE 6 (1) THE COMPANIES OF ONE CONTRACTING PARTY SHALL IN ANY TERRITORY OF THE OTHER BE ACCORDED TREATMENT NOT LESS FAVOURABLE THAN THAT ACCORDED TO THE COMPANIES OF ANY OTHER FOREIGN COUNTRY IN ALL MATTERS RELATIVE TO THE CARRYING ON OF ALL KINDS OF BUSINESS, INCLUDING FINANCE, COMMERCE, INDUSTRY, BANKING, INSURANCE, SHIPPING AND TRANSPORT, AS WELL AS IN ALL MATTERS RELATIVE TO THE ESTABLISHMENT AND MAINTENANCE FOR SUCH PURPOSE OF BRANCHES, AGENCIES, OFFICES, FACTORIES AND OTHER ESTABLISHMENTS APPROPRIATE TO THE CONDUCT OF THEIR BUSINESS.

3. WE ARE MAILING THROUGH THE APO COPIES OF THE TREATIES MENTIONED ABOVE TO MARTHA DEWITT IN EA/J. WE WILL REMAIN IN CONTACT WITH THE FOREIGN MINISTRY ON THE AVIGLIANO CASE AND WILL REPORT ANY PERTINENT COMMENTS BY THE MINISTRY.

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